Filed 2/28/12 In re A.M. CA1/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re A.M., a Person Coming Under the Juvenile Court Law.	
CONTRA COSTA COUNTY CHILDREN & FAMILY SERVICES, Plaintiff and Respondent, v. T.S., Defendant and Appellant.	A129891 (Contra Costa County Super. Ct. No. J0900820)

T.S. (Mother) challenges the juvenile court's decision to place her daughter, A.M., in a non-relative, non-Native American foster home. While Mother does not contest the jurisdictional findings or argue that A.M. be returned to her custody, she contends that violations of the Indian Child Welfare Act (ICWA) require this court to reverse the disposition order and order that A.M. be placed with her Indian maternal grandparents or another Indian home. We conclude that initial failures to comply with ICWA notice requirements were remedied and do not warrant a reversal of the placement decision, that the child welfare agency's efforts to prevent the breakup of a Native American home were sufficient under ICWA, and that the record supports A.M.'s placement. Accordingly, we affirm.

BACKGROUND

I. Events Leading to the Dependency Proceedings

A.M. was in first grade when these proceedings began. In May 2009, while Mother's apartment was under police surveillance for suspected drug activity, police observed known felons and drug patrons touch and "swat" a young girl who answered the front door in her underwear. When officers raided the home they found drugs, paraphernalia, filth, and minimal necessities of life. There were dildos and homemade vibrators on the bed A.M. shared with Mother.

When she was interviewed by police at her school, A.M. said she hated living with Mother and that their home was always too smoky and noisy to sleep, study or play. She had no food or toys, and Mother paid no attention to her. A.M. said that Mother's visitors had sexually molested her on multiple occasions, and that Mother was aware of these assaults.[1] A sexual assault examination revealed suspicious redness and anal markings that suggested possible sexual activity.

A.M. also said that a man slept on their couch and stored cans he collected in the backyard, leaving no room for her to play. She described situations where Mother would "hustle" people for money. Sometimes Mother and her friends would drive A.M. places late at night and make her stay in the car for hours while they went inside.

Mother admitted that she smoked rock cocaine two or three times a week, sometimes in A.M.'s presence, and that her friend sold rock cocaine from her home. Mother denied any knowledge about men molesting A.M., but she admitted that she took A.M. with her to panhandle. A.M. was placed in an emergency foster home.

On the day after the raid, a social worker took A.M. to the Children's Interview Center (CIC). When the social worker picked her up at school, A.M. asked "Will I see my foster mom again? She was the best ever!" A.M. was ebullient to learn she would remain with the foster mother for the time being, saying "Yes! They have food and toys! Can you believe it!" On the way to the interview A.M. shouted from the car window,

[1] Two men A.M. identified from mug shots were later arrested.

"I'm free! I'm free! Can you believe it! Isn't it great?" The CIC interview ended prematurely when, after answering only basic questions, A.M. pulled her chair into the corner and shouted "This is not how little girls should live! This is not what little girls should do!"

II. Detention and Jurisdiction

The Contra Costa County Bureau of Children & Family Services (CFS) filed a juvenile dependency petition alleging that both parents failed to protect A.M. from harm (Welf. & Inst. Code, § 300, subd. b) and a prior episode of sexual abuse by A.M.'s father.[2] As later amended, the petition alleged that Mother failed to protect A.M. from multiple, ongoing acts of sexual abuse, including anal and vaginal penetration, by men she allowed into the home; that Mother's serious and chronic substance abuse problem prevented her from properly caring for A.M.; and that Mother exposed A.M. to frequent and ongoing drug use in the home by multiple adults, left drug paraphernalia within A.M.'s reach, cooked and sold rock cocaine in their one-bedroom apartment, and left A.M. alone in a car for hours at a time in the middle of the night.

CFS rejected the maternal grandparents for foster placement because the social worker felt they could not adequately protect A.M. The maternal grandmother told the social worker that Mother was to live with the grandparents upon her release from jail until she could start a treatment program. The social worker was also concerned that, even though they were aware that transient men were living in Mother's apartment, the grandparents had not previously intervened to protect A.M. Despite their knowledge of the conditions in the home, the grandparents failed "to set boundaries, recognize red flags, and, ultimately, demonstrate that they can protect their grandchild."

After a number of continuances, the jurisdiction hearing was held on September 9 and November 10, 2009. Grandmother testified that she was unsure whether to believe A.M.'s allegations of molestation and abuse. She believed there was ongoing drug abuse in Mother's home and that she was doing crack cocaine, but had trouble believing Mother

[2] Father lives out of state and has not appealed.

would knowingly allow A.M. to be sexually abused. She thought the police might have coerced A.M. into fabricating the abuse allegation. Grandmother had some concerns about Mother's parenting, but they were not serious enough to warrant calling the police or CFS. The court and parties viewed two videotaped CIC interviews of A.M. made on May 29 and June 3.

When the jurisdiction hearing reconvened on November 10 the court received an addendum report containing a statement by psychologist Anna Weisberg, Ph.D. Dr. Weisberg had seen A.M. eight times. She believed her presentation was consistent with children who had been sexually abused and neglected. A.M. told Weisberg she had no wish to see either her father or Mother, did not love them, and did not remember ever loving them.

Detective Danielle Joannides interviewed A.M. at her school on May 28. A.M. described the molestations at Mother's house to Detective Joannides and said that Mother knew what the men did to her.[3] There were always people coming and going at the apartment, they would take her food, and she was constantly told to leave a certain room because everyone was smoking in the house all of the time. A man named "OG" slept in the living room. A.M. said Mother was a hustler and sometimes took her out to help hustle for money.

The court found the allegations of the amended petition to be true.

III. Disposition and ICWA Intervention

On December 3, 2009 the maternal grandparents filed a modification petition pursuant to Welfare and Institutions Code section 388[4] requesting that A.M. be placed with them. The court reserved the issue until disposition and granted CFS authority to allow the grandparents up to 30 days of visitation with A.M. over the holidays.

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[3] It is not necessary to repeat the factual details of the assaults.

[4] Further references to California statutes are to the Welfare and Institutions Code.

A.M.'s Native American heritage was apparently first raised at a hearing held on January 4.[5] Tribal representative Nicole Allison of the Cherokee Nation of Oklahoma (Tribe) appeared telephonically and said the Tribe was intervening and had formally asked CFS for information about the case. CFS acknowledged that it had failed to make any inquiry about Mother's Indian heritage or notify the Tribe of the proceedings. The court set a February 1, 2010 hearing on disposition and the grandparents' section 388 petition, after which Allison terminated her telephone appearance. The court then set a hearing on the grandparents' request for visitation to be held three days later, on January 7, apparently without notice to the Tribe.[6] On January 7 the court denied the visitation request without prejudice until such time as A.M.'s therapist determined it would be appropriate.

The Tribe filed a notice of intervention on January 19. At a February 1 disposition hearing, with tribal representative Allison participating by telephone, CFS advised the court that A.M. was eligible for tribal membership. The court continued the hearing to give CFS time to investigate placing A.M. with her maternal grandparents or other Indian relatives and directed CFS to provide Mother with appropriate referrals for services and therapy, which apparently had not yet been initiated. The Tribe, through Allison, requested that CFS move A.M. from her current foster home into an ICWA-compliant placement.

Before the next hearing the grandparents filed a request for de facto parent status and a second section 388 petition asserting that they were a preferred relative placement under ICWA. The Tribe submitted a report detailing CFS's lack of compliance with

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[5] In a May 3 report filed with the court, the Tribe said it received a referral that A.M. had been removed on December 21, 2009 and notified CFS she was eligible for tribal membership by letter that same date. It submitted a Notice of Intervention on December 31. The record does not clarify whether the December 21 referral originated from CFS or some other source; Mother says the Tribe "learned of the proceeding informally" but does not explain how.

[6] Although the court had authorized CFS to allow visitation over the holidays, the grandparents had been allowed only one visit.

ICWA and its resistance to placing A.M. with her Indian grandparents or in another ICWA-compliant home.

The contested disposition commenced on May 20. ICWA expert Rachelle Goldenberg testified that since March, but not before, CFS had complied with ICWA's requirement that it provide services designed to prevent the breakup of an Indian family. The parties stipulated to extend the reunification period for six months to compensate for the agency's delay in providing those services. Goldenberg explained that there are two different levels of family reunification services; the reasonable efforts offered to non-Indian families who are not subject to ICWA, and services specific to the Native American community that also provide cultural support and background. Goldenberg opined that, prior to March, Mother had been provided with reasonable reunification services, but not the "active efforts" required by ICWA, and that active efforts were made from March forward.[7] In early February, CFS obtained referrals for local summer camps and classes from Indian Child & Family Services and contacted Indigenous Nation's Child and Family Services. Since March, Goldenberg had referred CFS and the foster family to a number of Native American services in Contra Costa and nearby counties, and verified that CFS had contacted the Indian Child Welfare Agency for Contra Costa County. CFS also put A.M. on waiting lists for an Indian child placement with Indigenous Nation's Children & Family Services and the Indian Child Resource Center. Mother was referred to additional services available through Intertribal Friendship House. While it was too early to know whether these efforts to reunite the family would prove successful, Goldenberg believed they were appropriate.

Goldenberg testified that if active efforts had not yet been made, "my expectation is that they would give this person more time and provide active efforts for a sufficient amount of time . . . for that parent to be able to meet their reunification goals."

When the disposition hearing reconvened on June 7, Mother testified about her drug use before A.M.'s removal, her subsequent incarceration for drug use, possession,

[7] All parties, including the Tribe, stipulated that active efforts were not made until March. All parties except Mother stipulated that CFS had made active efforts since then.

and child endangerment, and her relationship with her parents. Mother had used drugs off and on for almost 27 years, since she was 14. She and her friends used drugs and drug paraphernalia in her apartment, but she said she kept them hidden when A.M. was home. Other people dropped their crack pipes in the apartment when police raided it, and the mess observed was made by the police. Otherwise, Mother kept her home clean. Nonetheless, she usually waited outside with A.M. when her parents came to pick her up so that they would not come inside if she were smoking or doing drugs. Grandfather always called ahead when he was going to visit, so she would make sure her company was gone and her drugs were hidden before he arrived. Grandfather had cautioned her about some of the people who stayed at her apartment, but her parents were unaware of the many people who were coming in and out.

Mother's parents had previously caught her panhandling with A.M. and threatened to take A.M. away. A week before A.M.'s removal, police conducted a child welfare check at the apartment and found nothing wrong. A.M. loved her grandparents and enjoyed their frequent visits. Mother thought A.M. was being influenced to say she didn't want to visit them. She had some concerns as to whether her parents were appropriate caretakers, but trusted her mother enough to temporarily care for A.M. until she was ready to resume custody.

Grandfather testified that he was very close to A.M. He regularly took A.M. to school and on outings, and she called them frequently and slept over at their house every couple of weeks. Grandfather almost never visited Mother's apartment unannounced and rarely went inside. He never witnessed the kind of disarray described at the time of the raid or saw drugs, paraphernalia or anything else in Mother's home that would justify removing A.M. from her custody. He had concerns about the men who were in and out of Mother's apartment, but, with the exception of Mother's boyfriend, he did not know they were doing drugs. Grandfather had asked the police to run warrant checks on Mother's visitors and asked the homeless man who slept there to leave, without success. Before A.M. was removed he helped out by providing food and clothing.

Grandfather said that if A.M. were placed with the grandparents he would refuse to let Mother have contact with her and would abide by court orders and CFS directives. He no longer doubted that A.M. had been molested, but he thought the social worker and foster mother were trying to influence her against wanting to see her grandparents.

By the June 22 hearing, Dr. Weisberg, a clinical psychologist with an expertise in sexual abuse victims, had met with A.M. about 35 times. Early in therapy A.M. talked about wanting to see her grandparents and feeling a closer connection to them than to Mother, but after the first visit in September 2009 she did not want to visit again. She had a "really bad day" after the visit, and told Weisberg she was afraid her grandparents might "steal" her. This fear persisted even though Weisberg told A.M. she would go with A.M. during the visit. Weisberg attributed A.M.'s fear to post traumatic stress disorder and explained that A.M. was averse to anything that risked her having to leave the foster home, where she felt safe and secure.

Weisberg believed that A.M. associated her grandparents with memories of what happened in Mother's home, and that seeing them reawakened the traumas she experienced there. A.M. had a general lack of trust in her grandparents' ability to keep her safe. She complained they were too permissive and gave her too many presents, and Weisberg attributed this to her underlying concern about the lack of boundaries and structure in her grandparents' home, particularly compared to the structure and rules that made her feel safe and protected in her foster home. A.M. saw her grandparents as unprotective and she did not think they would be good parents.

Based on her clinical observations and therapy, Weisberg believed A.M. had suffered serious emotional injury and had "absolutely" been traumatized by what was done to her in Mother's care. Children who suffer such emotional and physical abuse commonly attach more quickly to a new caretaker than other children, and it would be traumatizing for A.M. to lose the security and attachment she had developed in her foster home: "children can only have relationships and lose relationships that young so many times before they start to harden to allowing themselves to be attached again in a healthy way." A.M. would not feel safe with her grandparents, and in light of her attachment to

her foster family, moving her to any new placement posed a particular risk of emotional and psychological harm. It would be "traumatizing" to move her from her current placement, regardless of the quality of home A.M.'s grandparents could provide. Weisberg felt A.M. was just as opposed to the idea of living with her grandparents six months earlier as she was at the time of the hearing.

Social worker Diane Cohen was assigned to the case about one month after A.M. was detained. Her initial priorities were to get A.M. stabilized and into therapy, so she did not immediately investigate a potential relative placement. The grandparents frequently called and dropped by her office with concerns about A.M.'s health and safety and to request visits and placement. Based on past experience, Cohen was concerned about the grandparents' ability to adequately protect A.M. Because Grandmother said she would provide a home for Mother upon her release from jail, CFS did not initially assess the grandparents for placement. When this did not happen, Cohen had an assessment processed but her supervisor decided against placing A.M. with her grandparents.

Cohen also testified that the foster mother made efforts to familiarize A.M. with Native American culture. Those efforts included meeting with Allison and Goldenberg, providing A.M. with relevant books, contacting the Cherokee Nation and Friendship House West for information about Native American events, and taking A.M. to a powwow. Cohen had recently learned of a potential Native American foster home in Sacramento, but Weisberg was extremely concerned about moving A.M. A.M. recently said that if she were moved she would run away and return to her current foster mother.

Grandmother testified that she "possibly" still believed the police had "put ideas into [A.M.'s] head to enhance the case." She believed A.M. was molested while in Mother's care, but the degree of events might have been exaggerated. She also believed A.M.'s foster parents and therapist were influencing her to say she did not want to visit her grandparents, and that, at Cohen's instigation, the foster mother coached A.M. to say they did not take good care of her. Grandmother attributed A.M.'s acting out after their

visit to the trauma of their four-month separation. The visit itself went very well; A.M. was very affectionate and told her grandparents all about her life with her foster family.

Grandmother did not know about Mother's drug abuse until A.M. was removed, and she disapproved of Mother's lifestyle and thought she was a selfish and inattentive mother. Grandmother was not aware of any Cherokee cultural activities in the area, was not enrolled in the Tribe, and had never had A.M. participate in Native American activities or spoken to her about her heritage. However, she was willing to take A.M. to Cherokee events and would work with Dr. Weisberg to help A.M. transition into her home.

On August 5, the last day of the disposition hearing, the court noted that an appropriate ICWA foster placement had been located. CFS reported that the prospective Indian foster mother was very nurturing and was experienced with issues of sexual abuse, post traumatic stress disorder, and dissociative behaviors.

The court adopted CFS's recommendations for disposition. It found by clear and convincing evidence that good cause existed to deviate from the ICWA placement guidelines and that CFS had complied with ICWA as of, although not before, March 2010. The court ordered family reunification, denied placement with the grandparents or the approved Native American foster home as inappropriate and dangerous to A.M. pending further updates from Dr. Weisberg, and ordered therapeutic visitation with the grandparents and Mother if and when Dr. Weisberg felt A.M. was ready. The court also denied the grandparents' request for de facto parent status. CFS agreed to continue Mother's reunification services to 18 months to allow adequate time for the active reunification efforts required under ICWA.

Mother filed a timely appeal from the August 5, 2010 orders and all prior findings and rulings. On April 19, 2011, the court terminated Mother's reunification services and

set a section 366.26 hearing.[8] Mother did not file a writ petition challenging the April 19, 2011 orders.

On August 11, 2011, the Cherokee Nation of Oklahoma, through Allison, withdrew the tribe's opposition to A.M.'s placement. Allison gave the court a glowing report of her meeting with A.M. and her foster family. She said: "Well, I did have the opportunity to meet with [A.M.], and it was a great opportunity. She is a great child. She has a beautiful, happy smile and a big heart. And she's just a very unique child. It was great to get to meet with her and the family. [¶] I did meet with the family, and I do like the foster family. I think the most important thing I learned is I got to see how they interacted together and see that nonverbal communication between them and how they interact and how they bond. [¶] And after seeing the way she feels towards the family I'm no longer contesting the placement. I do think that she should stay there because that's what she wants. I do still feel that, you know, in the beginning she could have been transferred into an Indian home had things literally gone – you know – but that's in the past. And right now what's the best is what's best for [A.M.]. [¶] And she does not want to be moved, and the tribe no longer – I don't want to put anymore pressure on her. I think she needs to have all the pressure off her. She needs to be more relaxed and just be a kid. [¶] So the tribe will no longer contest the placement. [¶] But I will not – I will not consent to any adoption until all appeals are completed."

DISCUSSION

I. The Initial ICWA Notice Violations

It is undisputed that CFS failed to comply with its inquiry and notification responsibilities under ICWA from the inception of this case until the Tribe intervened some seven months later. It is also undisputed that, even after the Tribe participated in a hearing on January 4, 2010, the court set and held a hearing on the grandparents'

[8] On October 14, 2011 we granted CFS's request for judicial notice of those orders and of the transcript of an August 11, 2011 hearing. (See *In re Z.N.* (2009) 181 Cal.App.4th 282, 298-301.) We now deny Mother's and CFS's subsequent requests for judicial notice as unnecessary to resolution of the issues on appeal.

visitation request without notifying the Tribe. Mother argues these ICWA violations demonstrate a "flagrant disregard for procedural and substantive protections" of ICWA. Although Mother's consternation and characterization of these inexplicable failures on the part of both CFS and the court are justified, they do not support reversal of the dispositional orders.

"Courts have consistently held failure to provide the required notice requires remand *unless the tribe has participated in the proceedings* or expressly indicated they have no interest in the proceedings. (Under such circumstances the error is often characterized as harmless)." (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1424, italics added; see also *In re S.B.* (2005) 130 Cal.App.4th 1148, 1162 [failure to provide ICWA notice was moot and/or harmless because the Tribe intervened and participated].) Such is the case here. Despite CFS's initial failure to comply with ICWA, the Tribe learned of the proceedings and became involved four months before the disposition hearing began. During the dispositional phase the court heard extensive testimony on the existence of good cause to depart from ICWA's placement preferences. Goldenberg and Allison participated in the proceedings in their respective capacities as ICWA expert and tribal representative expressly, and the Tribe withdrew its opposition to A.M.'s placement with her foster family. Thus, as A.M.'s appellate counsel observes, reversal and remand would be an empty exercise. Accordingly, the initial notice violations provide no basis to reverse the dispositional findings and orders that resulted from those proceedings. (*In re S.B.*, *supra*, 130 Cal.App.4th at p. 1162.)

II. Active Efforts

Under ICWA and California law, "[a]ny party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." (25 U.S.C. § 1912(d); § 361.7, subd. (a).) Mother contends there was insufficient evidence that CFS provided such efforts, and therefore that the case must be remanded for appropriate services designed to transition

A.M. to a placement with Mother, the grandparents, or another Indian home.[9] Specifically, she criticizes CFS and the court for rejecting placement and visitation with the grandparents and failing to consider the Tribe's prevailing social and cultural standards. We disagree.

"What constitutes active efforts shall be assessed on a case-by-case basis. The active efforts shall be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts shall utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers." (§ 361.7, subd. (b).) Thus, "while the court must make a separate finding under section 1912(d), the standards in assessing whether 'active efforts' were made to prevent the breakup of the Indian family, and whether reasonable services under state law were provided, are essentially undifferentiable. Under the ICWA, however, the court shall also take into account 'the prevailing social and cultural conditions and way of life of the Indian child's tribe.' " (*In re Michael G.* (1998) 63 Cal.App.4th 700, 714; see also *In re A.A.* (2008) 167 Cal.App.4th 1292, 1317-1318; *Letitia V. v. Superior Court* (2000) 81 Cal.App.4th 1009, 1016.)

Here, whether reviewed for substantial evidence (*In re Michael G.*, *supra*, 63 Cal.App.4th at pp. 715-716) or independently to the extent it presents a mixed question of law and fact (see *In re K.B.* (2009) 173 Cal.App.4th 1275, 1286), the record supports the court's finding that active efforts were made to prevent the breakup of an Indian family. ICWA expert Goldenberg and tribal representative Allison stipulated on May 20 that active efforts had been provided since March 2010. Those efforts included referrals to local Native American camps, classes and other Native American services and programs, contacts with the Indian Child Welfare Agency for Contra Costa County, and placing A.M. on waiting lists for a Native American foster placement. Mother was referred to

[9] Mother initially contended the court failed to make required findings that active efforts were made, but she acknowledges in her reply brief that this was based on an erroneous reading of the record.

additional services available through Intertribal Friendship House. The foster mother met with both Allison and Goldenberg, contacted the Cherokee Nation and other Indian resources for information about Native American events, provided A.M. with books about Native American culture, and took her to a cultural event.

Mother maintains these actions were inadequate because CFS failed to use extended family resources by refusing to place A.M. with her grandparents, provide them visitation, or facilitate their communication with A.M.'s therapist.[10] While we do not doubt the grandparents' love and concern for their granddaughter, the record discloses valid reasons supporting the denial of grandparent visitation and custody. The grandparents initially intended to provide housing for Mother in their home after her release from prison and disavowed that plan only after they learned it would disqualify them for placement. There were also reasonable grounds for CFS's concern that the grandparents were insufficiently attentive and responsive to the dangers A.M. was exposed to in Mother's care. Dr. Weisberg testified that it was extremely important that A.M. have caretakers who believed she was molested, but Grandmother continued to believe that A.M. had exaggerated her reports of abuse. Moreover, A.M. was very clear that she did not trust her grandparents to keep her safe, did not feel safe with them, and did not want to visit them. A.M.'s older sister T.M.[11] cautioned a CFS investigator against placing A.M. with the grandparents "because they will control and manipulate her." Finally, even Mother expressed concerns "to a point" about her parents' ability to adequately care for A.M.

Mother's further claim that CFS failed to offer her adequate services is meritless. Mother was provided with extensive services. She entered the La Casa Ujima residential treatment program in January 2010 and successfully completed it in June. The program

[10] Mother also claims the court failed to consider the Tribe's prevailing social and cultural standards and ignored the value it places on familial connections, but upon inspection this assertion seems to be premised solely on the fact that A.M. was not placed with her grandparents or in an Indian foster home. We therefore consider her charge against the court as part of her more general contention that active efforts were not made.

[11] T.M. lives with Father in Washington.

included parenting classes, 12-step meetings, and drug testing. She participated in individual therapy at Community Violence Solutions. She was provided with ICWA-related services through Friendship House, which provides parenting classes, drug and alcohol treatment and aftercare, and domestic violence workshops. She was referred to the Native American Health Center and the Bacair Collaborative Project of Indian Agencies for support resources and services. While Mother complains she was not given visitation, the record does not show that she requested it – there is only her testimony at the disposition hearing that she had written the assigned social worker some letters and that one of them "probably" was to request to start visitation, but she did not remember. Accordingly, Mother forfeited any claim on appeal that mother-daughter visits were a necessary component of active efforts. (*In re S.B.*, *supra*, 130 Cal.App.4th at pp. 1159-1160)

III. Placement

Mother contends there was insufficient evidence to support the finding of good cause to deviate from ICWA's placement preferences. Here, too, the record belies her contention.

Absent good cause to the contrary, ICWA "mandates that adoptive placements be made preferentially with (1) members of the child's extended family, (2) other members of the same tribe, or (3) other Indian families. [Citation.] 25 United States Code section 1915(b) states a similar preference for any Indian child accepted for foster care or preadoptive placement, in the absence of good cause to the contrary. In this way, ICWA seeks to protect the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society. [Citation.] [¶] Although Congress defined numerous terms for ICWA purposes at the outset of the act (see 25 U.S.C. § 1903), it did not define the phrase 'good cause' as used in 25 United States Code section 1915 (Section 1915). Nevertheless, according to ICWA's legislative history, Congress, by its use of the term 'good cause,' explicitly intended to provide state courts with flexibility in determining the placement of an Indian child. [Citations.]"

(*Fresno County Dept. of Children and Family Services v. Superior Court* (2004) 122 Cal.App.4th 626, 641 (*Fresno County*); see § 361.31.)

In California, guidance on the meaning of "good cause" is provided by statute and rule of court. Section 361.31, subdivision (h) authorizes the juvenile court to depart from the ICWA placement preferences for good cause.[12] Rule 5.484(b)(2) of the California Rules of Court[13] provides a non-exclusive list of factors relevant to the good cause determination. It states: "The court may deviate from the preference order only for good cause, which may include the following considerations: (A) The requests of the parent or Indian custodian; (B) The requests of the Indian child, when of sufficient age; (C) The extraordinary physical or emotional needs of the Indian child as established by a qualified expert witness; or (D) The unavailability of suitable families based on a documented diligent effort to identify families meeting the preference criteria." As indicated by the permissive language, the court is not limited to the enumerated considerations when it evaluates whether good cause exists to place a child with a non-Indian caregiver. (*Fresno County, supra*, 122 Cal.App.4th at pp. 643-644.)

The good cause finding is reviewed for substantial evidence, and accordingly "begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. [Citation.] All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the decision, if possible. We may not reweigh or express an independent judgment on the evidence. [Citation.] In this regard, issues of fact and credibility are matters for the trial court alone." (*Fresno County, supra*, 122 Cal.App.4th at p. 646.)

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[12] "The court may determine that good cause exists not to follow placement preferences applicable under subdivision (b),(c),or (d) in accordance with subdivision (e)." (§ 361.31, subd. (h).) Subdivision (e) directs that, "[w]here appropriate, the placement preference of the Indian child, when of sufficient age, or parent shall be considered."

[13] All further references to rules are to the California Rules of Court.

Substantial evidence supports the good cause finding here. A.M. was adamant that she did not want to live with either Mother or her grandparents. As Weisberg explained, "She's afraid of going back to the life she had. She wants nothing of it, even if she has to let go of the people that were part of it." She consistently voiced her preference to remain instead with her foster family, and Weisberg testified it would be emotionally and psychologically devastating for her to be moved from their care. Moreover, there was abundant evidence that the severe emotional trauma inflicted on A.M. in Mother's care left her in extraordinary need of a stable and protective living situation where she felt safe – and she did not feel safe with her grandparents. She associated them with memories of the abuse and neglect that occurred in Mother's home, and seeing them reawaked memories of those traumas. Moreover, A.M.'s grandparents did not provide the boundaries and structure she needed, and discounted the extent to which A.M. had been victimized in Mother's care.

Mother relies on dictum in *In re Desiree F.* (2000) 83 Cal.App.4th 460 to argue that the juvenile court may never consider a child's attachment to a current non-Indian caretaker in determining whether good cause exists to depart from ICWA placement preferences. She reads the case too broadly. As clarified in *Fresno County, supra,* 122 Cal.App.4th at pp. 643-644, the criteria listed under ICWA guidelines and rules of court are non-exclusive. Accordingly, we question *Desiree F.*'s language to the extent it may be read to suggest that a juvenile court may not consider the harm to a child that will occur in separating that child from a non-ICWA compliant placement when determining whether good cause requires deviating from the ICWA preferences. (See *Fresno County, supra,* at pp. 643-644.) Indeed, such a blanket rule seems inconsistent with the rule explicitly authorizing the juvenile court to consider the child's wishes and extraordinary emotional needs when it makes the good cause determination. (Rule 5.484(b)(2)(C).) In any event, the language Mother relies on from *Desiree F.* is a directive to the specific juvenile court that would hear the matter upon remand, not a holding, and therefore has no binding precedential value here.

Mother's remaining attacks on the good cause finding merit only brief discussion. The court's comment in ruling on disposition that CFS did not adhere to the ICWA "guidelines" before March 2010 is, patently, not proof that it failed to understand that ICWA placement preferences are mandatory *absent good cause.* In any event, the court's express finding of good cause to depart from those preferences demonstrates that it understood and applied the law. Mother's claim that the court "disregarded" the Tribe's identification of the grandparents and an Indian foster home as alternative placements is equally unfounded. The court clearly considered those possibilities and found them to be inappropriate. Finally, Mother criticizes Dr. Weisberg's testimony, A.M.'s wishes regarding placement, and the court's rejection of Mother's request for placement with the grandparents. These attacks merely invite this court to reweigh the evidence and substitute our own assessment for that of the juvenile court, which we may not do. (*Fresno County, supra,* 122 Cal.App.4th at p. 646.)

DISPOSITION

The orders of the juvenile court are affirmed.

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Siggins, J.

We concur:

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McGuiness, P.J.

_____
Pollak, J.